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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,125	07/29/2003	Michael Forster	286785.120	5905

23483 7590 08/23/2004

WILMER CUTLER PICKERING HALE AND DORR LLP  
60 STATE STREET  
BOSTON, MA 02109

EXAMINER

MOFIZ, APU M

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/629,125	FORSTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Apu M Mofiz	2175	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) •                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/20/2004</u> •  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,601,058. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims of U.S. Patent No. 6,601,058 contain every element of claim 1 of the instant specification.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651."

***Claim Rejections - 35 USC § 103***

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bhargava et al. (U.S. Patent No. 5,701,454 and Bhargava hereinafter) in view of McGoveran (U.S. Patent Publication No. 2003/0187864).

As to claim 1, Bhargava teaches a method for exploring relationships (i.e. accessing relations in a relational database) (Abstract; col 1, lines 15-35) in data stored in a computer readable medium (Fig. 1), providing a set of operators (i.e. selection, projection, join, intersection etc. operators) (Abstract; col 3, lines 45-65) that includes relational operators (Abstract; col 3, lines 45-65); receiving a query (Abstract; col 3, lines 45-65) having at least one operator chosen from the set of operators (Abstract; col 3, lines 45-65); transforming the query (Abstract; col 3, lines 45-65) into a set program (Abstract; col 3, lines 45-65) having at least one operation structure (Abstract; col 3, lines 45-65), corresponding to the at least one operator (Abstract; col 3, lines 45-65); performing an operation, corresponding to the at least one operator (Abstract; col 3, lines 45-65), and providing a data structure (i.e. the tree data structure) (Fig. 4; col 10, lines 15-35) that cooperates with the operation structure (Abstract; col 3, lines 45-65) and

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handles data access and storage associated with the operation (Fig. 4; col 10, lines 15-35).

Bhargava does not explicitly teach the use of non-relational Operators and type-independently, and without inherent meaning, performing an operation.

McGoveran teaches the use of non-relational Operators (i.e. "The allowed processor operations include logical operations (e.g. 'AND', 'OR', 'NOT') and relational operations (e.g., join, product, difference, divide, intersection, restriction, projection, aggregation, union, grouping, and partitioning); ...") (page 1, paragraph [0007]) and type-independently (Abstract; page 4, paragraph [0022], paragraph [0023]), and without inherent meaning (Abstract; page 4, paragraph [0022], paragraph [0023]), performing an operation (Abstract; page 4, paragraph [0022], paragraph [0023]).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Bhargava with the teachings of McGoveran to include the use of non-relational Operators and type-independently, and without inherent meaning, performing an operation with the motivation to provide for within the RDBMS for data input, manipulation, and output (McGoveran, page 1, paragraph [0007]) and provides a symbolic abstraction without having to distinguish between base and derived data (McGoveran, page 9, paragraph [0061]).

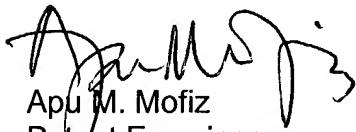
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***Points of Contact***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Apu M. Mofiz whose telephone number is (703) 605-4240. The examiner can normally be reached on Monday – Thursday 8:00 A.M. to 4:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached at (703) 305-3830. The fax numbers for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

  
Apu M. Mofiz  
Patent Examiner  
Technology Center 2100

August 13, 2004